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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,802	12/22/2005	Yasushi Washio	SHIGA7.35APC	1118

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EXAMINER	
LE, HOA VAN	

ART UNIT	PAPER NUMBER
1752	

NOTIFICATION DATE	DELIVERY MODE
05/09/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/561,802	**Applicant(s)** WASHIO ET AL.	
	Examiner Hoa V. Le	**Art Unit** 1752	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please see the attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s): _____
13. ☐ Other: _____.

Hoa V. Le
Primary Examiner
Art Unit: 1752

This is in response to Papers filed on 27 April 2007.

A. (*) There are misunderstanding with respect to "There is no suggestion of compounds with n being 2 in the general formula in the cited paragraph. There is also no suggestion of an additional compound or dyeable polyolefin composition in Pfeifer." in the response filed on 27 April 2007. There has been intended and should be read that the Office does not suggest or apply on:

(1) any compound "with n being 2 in the general formula in the cited paragraph" and

(2) any "additional compound or dyeable polyolefin composition in Pfeifer"

(**) There are misunderstood that the Office relies on applied Pfeifer for the disclosures, teachings and suggestions of (1) "compounds with n being 2 in the general formula in the cited paragraph" and (2) "an additional compound or dyeable polyolefin composition".

(***) One having ordinary skill in the art may reasonably have or ask a question as to why the Office has to rely on:

(1) any compound "with n being 2 in the general formula in the cited paragraph" and

(2) any "additional compound or dyeable polyolefin composition in Pfeifer"

B. Therefore, there are some explanations being added:

I. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 4 of copending Application No. 10/560,155 in view of Pfeifer (3,207,725). The applied claims in 10/560,155 is related ammonium salt(s) of alkyl diphenyl ether sulfonic acid(s) but that of alkali metal salt(s) in the instant claims. However, it is known in the art to use alkali metal(s) and/or ammonium(s) in combination(s) or alternative(s). Evidence, can be seen in at least Pfeifer at col. 2:7-43. There is no suggestion of compounds with n being 2 in the general formula in the cited

paragraph. There is also no suggestion of an additional compound or dyeable polyolefin composition in Pfeifer.

---There has been intended and should be read that the Office does not suggest or apply on:

(1) any compound "with n being 2 in the general formula in the cited paragraph" and

(2) any "additional compound or dyeable polyolefin composition in Pfeifer".---

Since the applied claims and Pfeifer are generally related to analogous salts of alkali metal(s) and ammonium(s) of alkyl diphenyl ether sulfonic acid(s), it would have been obvious to one having ordinary skill in the art at the time the invention was made to (1) include an amount of an alkali metal salt of an alkyl diphenyl ether sulfonic acid for reasonable expectation of obtaining an additional benefit of an analogous anionic surfactant in the art and/or (2) use alkali metal salt(s) in place(s) of that (those) of ammonium salt(s) of alkyl diphenyl ether sulfonic acid(s) for a reasonable expectation of obtaining the benefit of analogous anionic surfactant in the art and as disclosed, taught and suggested in Pfeifer.

This is a provisional obviousness-type double patenting rejection.

Applicant's arguments filed 27 April 2007 have been fully considered but they are not persuasive.

The arguments with respect to the misunderstanding issues have been considered but had a little value since there is no patentable value on a misunderstanding issue.

The language "or less" include zero in the art.

II. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato et al (5,985,525) considered in view of Pfeifer (3,207,725).

Sato et al disclose, teach and suggest a developer composition and its use. The composition comprising an organic quaternary ammonium base as claimed and an analogous ammonium salt(s) of alkyl diphenyl ether sulfonic acid(s) instead of alkali metal salt(s) thereof in the claims. Please see the whole disclosure of each of the applied references, especially in Sato et al at col.2:41 to 3:55 and 5:12-16.

However, it is known in the art to use alkali metal(s) and/or ammonium(s) in combination(s) or alternative(s) as salt(s) of alkyl diphenyl ether sulfonic acid(s). Evidence, can be seen in at least Pfeifer at col. 2:7-43. There is no suggestion of

compounds with n being 2 in the general formula in the cited paragraph. There is also no suggestion of an additional compound or dyeable polyolefin composition in Pfeifer.

---There has been intended and should be read that the Office does not suggest or apply on:

(1) any compound "with n being 2 in the general formula in the cited paragraph" and

(2) any "additional compound or dyeable polyolefin composition in Pfeifer".---

Since Sato et al and Pfeifer are generally related to analogous salts of alkali metal(s) and ammonium(s) of alkyl diphenyl ether sulfonic acid(s), it would have been obvious to one having ordinary skill in the art at the time the invention was made to (1) include an amount of an alkali metal salt of an alkyl diphenyl ether sulfonic acid for reasonable expectation of obtaining an additional benefit of an analogous anionic surfactant in the art and/or (2) use alkali metal salt(s) in place(s) of that (those) of ammonium salt(s) in alkyl diphenyl ether sulfonic acid(s) for a reasonable expectation of obtaining the benefit of analogous anionic surfactant in the art and as disclosed, taught and suggested in Pfeifer.

Applicant's arguments filed 27 April 2007 have been fully considered but they are not persuasive.

The arguments with respect to the misunderstanding issues have been considered but had a little value since there is no patentable value on a misunderstanding issue.

The showings in the instant application have been carefully studied and considered with comments being already on the record in the Office action mailed on 30 January 2007.

III. Tanaka et al (5,543,268) and Tanaka et al (6,329,126) have about the same teachings and suggestions as those in the above applied Sato et al. They are cumulative.

Toyama et al (EP 0 272 686 and EP 0 323 836) are related to a sodium alkyl diphenyl ether disulfonate but fail to specify that the disulfonate groups are on the phenyl group other than the alkyl phenyl group as disclosed in the instant claims.

Table 1 with respect to the chemical structures in Japanese priority document has been considered. Accordingly, Takamiya (7,063,937) are cited to show the state of the art with sodium alkyl diphenyl ether disulfonate

Takamiya (7,147,995 and 2004/0185371) is cited to show the state of the art.

IV. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

V. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa V. Le whose telephone number is 571-272-1332.

The examiner can normally be reached from 6:30 AM to 4:30 PM on Monday though Thursday and about the same time of most Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on 571-272-1526.

Applicants may file a paper by (1) fax with a central facsimile receiving number 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hoa V. Le
Primary Examiner
Art Unit 1752

HVL
03 May 2007

HOA VAN LE
PRIMARY EXAMINER
Hoa Van Le